

Section 6-1300 Special Exceptions.

The provisions of this Section apply only to the AR-1, PD-H3 and PD-CC zoning districts that were added to the corporate limits of the Town of Round Hill by the Boundary Line Adjustment between Loudoun County and the Town, effective January 1, 2005.
[Amended March 20, 2008]

6-1301 Purpose.

The special exception procedure is designed to provide the Council with an opportunity for discretionary review of requests to establish or construct uses or structures which have the potential for a deleterious impact upon the health, safety, and welfare of the public; and, in the event such uses or structures are approved, the authority to impose conditions that are designed to avoid, minimize or mitigate potentially adverse effects upon the community or other properties in the vicinity of the proposed use or structure. Any special exception or minor special exception approval granted by the Council shall be implemented in strict accordance with the conditions of approval of the special exception.

6-1302 Authorized Special Exception Uses.

Only those special exceptions or minor special exceptions that are expressly authorized as such in a particular zoning district, or elsewhere in this Ordinance may be approved. Further, no existing use shall hereafter be changed to another use that is designated as a special exception use in such district, and no approved special exception use shall be enlarged or expanded unless approval of a new special exception has been granted by the Council.

6-1303. Authorized Temporary Special Events.

An applicant for a special exception use or minor special exception use may include in the application a request for authorization of temporary special events that the applicant expects to regularly occur during the life of the special exception use. The applicant shall be specific about the expected types of special events, the expected number of events per calendar year, the expected duration of such special events, and the expected number of attendees per event. In addition, the applicant shall include all pertinent information necessary to show compliance with the standards and criteria set forth in Section 5-500(C) (Temporary Special Events) of this Ordinance. Review of the requested temporary special events shall occur concurrently with the review of the special exception or minor special exception use according to the procedures set forth in this Section 6-1300. All requested temporary special events that are submitted as part of a special exception or minor special exception use application shall be reviewed for compliance with the standards and criteria set forth in both this Section 6-1300 and Section 5-500(C). Temporary special events approved as part of a special exception use or minor special exception application

are exempt from the procedural requirements for a temporary zoning permit stated in Section 5-500(C), but shall be subject to all other applicable standards in Section 5-500(C) including without limitation the minimum standards and criteria in Section 5-500(C)(6), limits on the duration of special events, and the maximum number of special events allowed in one calendar year.

6-1304 Review of Application..

The Council may permit a special exception or minor special exception as part of a zoning map amendment, or by special exception procedures at any time after a zoning map amendment. An application for a special exception shall be filed, contain such material as may be required, and be processed pursuant to the following:

- (A) **Pre-Application Conference.** Prior to filing an application, an applicant shall meet with the Director of Planning and discuss his intentions with regard to a given application and questions regarding the procedures or substantive requirements of this Ordinance. In connection with all such conferences, the Zoning Administrator shall be consulted as appropriate. A request for a pre-application conference shall be made in writing to the Director of Planning and shall be accompanied by a sketch map(s) of the site, a description of the existing environmental, topographical and structural features on the site, the proposed project or use, graphics that illustrate the scale, location and design of any buildings or structures to the extent known, and a list of the issues to be discussed at the conference. No matters discussed at said meeting shall be binding on either the applicant or the Town. The Director of Planning shall respond to each written request for a pre-application conference within fifteen (15) calendar days. If a pre-application conference is not scheduled within thirty (30) calendar days of a request for such conference, then the applicant may request a waiver of the conference. The Planning Director may waive the pre-application conference requirement in cases where the Director finds that such waiver is not detrimental to the applicant or the Town.

- (B) **Review of Application for Completeness.** No application shall be accepted and reviewed unless determined by the Director of Planning to be complete. A complete application is one which meets such minimum submission requirements as may be established pursuant to Section 6-403 and Section 6-1310 as applicable. For minor special exceptions, the Planning Director shall review the application within fifteen (15) calendar days of filing to determine if it includes the minimum submission requirements. For special exceptions, within thirty (30) calendar days of filing, each application shall be reviewed to determine if it

includes the minimum submission requirements. The Town shall maintain a current log of all pending applications.

- (C) **Acceptance of Complete Application.** Within fifteen (15) calendar days of receipt of an application for a minor special exception, and within thirty (30) calendar days of receipt of an application for special exceptions, the Director of Planning shall either accept the application if it is complete and forward to the applicant a notice of acceptance or a notice of incompleteness specifying those areas of additional information necessary for review.
- (1) If neither a notice of acceptance nor incompleteness is sent, the application shall be deemed accepted for the purposes of beginning the time limits of this Ordinance forty-five (45) calendar days after the filing of the application.
 - (2) If notice of incompleteness is sent, the applicant may resubmit the application with the additional data required, in which event the Director of Planning shall review the resubmitted application within fifteen (15) calendar days from the date of receipt, in the manner provided in this Section for the application.
 - (3) If the deficiencies set forth in the notice of incompleteness are not addressed, or the application is not resubmitted within thirty (30) calendar days of the date of the notice, the Planning Director shall notify the applicant that the original application has been rejected as incomplete.

6-1305 Staff Review of Application.

- (A) **General Review/Referral.** Upon acceptance of the application for special exception or minor special exception, the Director of Planning shall forward a copy to any town, county, or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application.
- (B) **Referral Responsibilities.**
- (1) **Minor Special Exceptions.** Each reviewing agency, within fifteen (15) calendar days from the date an application has been accepted, shall prepare a staff report which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the Director of Planning.

- (2) **Special Exceptions.** Each reviewing agency, within thirty (30) calendar days from the date an application has been accepted, shall prepare a staff report which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the Director of Planning.
- (C) **Review of Referrals.** Referral comments shall be obtained and reviewed by the Director of Planning within thirty days for minor special exceptions and within forty-five (45) calendar days for special exceptions after a final application has been accepted. The Planning Director shall forward to the applicant a written review of the issues identified during the review of the application.

Applicant Response and Subsequent Review. The process and timelines for the applicant's response to the issues identified during the review of the application, as well as the process and timelines for subsequent review of the application, is identified below. If the applicant's response results in an amended application, the provisions of Section 6-1306 shall apply.

- (1) The applicant shall, within fifteen (15) calendar days of transmittal of the written review of issues, respond in writing to all of the issues identified in the written review. Such response shall be subject to the provisions of Section 6-1306.
- (2) Failure on the part of the applicant to respond within the fifteen (15) calendar day timeframe specified above shall result in the suspension of the decision deadline for such application, and will resume on the date of receipt of the applicant's response to all of the issues identified in the written review.
- (3) If new information is received as part of the applicant's response, a second referral shall be completed within thirty (30) calendar days from receipt of the applicant's response to the written review, and a report from such reviewing agencies forwarded to the Planning Director.
- (4) The Planning Director shall, within fifteen (15) calendar days thereafter; forward to the applicant a second written review of the issues identified during the review of the application.
- (5) The decision deadline for the application will be suspended from the date of transmittal of the second written review.

and will resume on the date of receipt of the applicant's response to all of the issues identified in the second written review.

- (6) The applicant's response to the second written review, or the first written review if the second referral is not applicable, shall constitute the applicant's final submittal prior to the Planning Commission or Council public hearing, whichever is appropriate. Upon receipt of the applicant's response to the second written review, the Planning Director shall proceed to prepare the report as specified in Section 6-1305(F), and shall schedule the application for a duly noticed public hearing with the Planning Commission or Council, whichever is appropriate.

- (E) **Required Action by Other Board.** In the event this Ordinance requires that a development permit not be issued until acted upon by some government board or agency other than the Planning Commission or Council, then the Director of Planning shall forward the application for development to such board or agency for appropriate action prior to the notification to an applicant that an application is ready to be presented to the Council or Planning Commission.

- (F) **Special Exception Report and Notice to Applicant.** The Planning Director shall compile the referrals and any other necessary information, prepare a written staff report with proposed findings and a recommendation, and notify the applicant that the report is complete and the application is ready to be presented to the Council or Planning Commission, as appropriate, for hearing.

6-1306 Amendment to Application.

An application shall be considered amended by the submission of any additional information or proposed changes to the application after it has been accepted. The submission of such additional information or proposed changes shall result in a thirty (30.) calendar day extension for minor special exceptions and in a forty-five (45) calendar day extension for special exceptions, of the decision deadline for the application. The Planning Director may reduce the extension of the application decision deadline specified above when, in the opinion of the Planning Director, such information does not require the full extension for review.

6-1307 Withdrawal of Application.

An application may be withdrawn upon written request by the Applicant any time prior to fifteen calendar days before the

scheduled public hearing. If the request for withdrawal is made after fifteen (15) calendar days or less before the scheduled public hearing, such withdrawal shall be only with the consent of either the Planning Commission or the Council, whichever body has advertised the hearing. No new application, concerning any or all of the same land, that is substantially the same as the withdrawn application shall be filed with twelve (12) months of the date of withdrawal, unless the respective body approving withdrawal specifies at the time it consents to withdrawal that said time limitation shall not apply.

6-1308

Limitation on Application After Denial

After the official denial of an application, substantially the same application concerning any or all of the same property shall not be filed within twelve (12) months of the date of denial.

6-1309

Hearings.

Applications for special exception shall be reviewed, considered, and approved, approved with conditions, or disapproved as either a minor special exception or special exception.

(A) Minor Special Exception. A duly noticed public hearing on an application for minor special exception shall be held by the Council and a decision made by it within ninety (90) calendar days of the date on which the application was accepted. The Town will use its best efforts to achieve an expedited review and decision time of less than (90) days for minor special exception applications, provided the applicant adheres to the minimum time frames described in this Section 6-1300.

(B) Special Exception.

(1) Prior to decision by the Council on a special exception, each application shall be the subject of a public hearing and a recommendation made by the Planning Commission.

(2) A duly noticed public hearing on an application for a special exception shall then be held by the Council and a decision made by it within ninety (90) calendar days of the date on which the application was accepted.

6-1310 Issues for Consideration.

In considering a special exception application, the following factors shall be given reasonable consideration. When a special exception or minor special exception application includes a request for approval of temporary special events, the following factors shall be reasonably considered taking into account the proposed special events as well as the principal special exception use. The applicant shall address all the following in its statement of justification or special exception plat unless not applicable, in addition to any other standards imposed by this Ordinance:

- (A) Whether the proposed special exception is consistent with the Comprehensive Plan.
- (B) Whether the proposed special exception will adequately provide for safety from fire hazards and have effective measures of fire control.
- (C) Whether the level and impact of any noise emanating from the site, including that generated by the proposed use, negatively impacts the uses in the immediate area.
- (D) Whether the glare or light that may be generated by the proposed use negatively impacts uses in the immediate area.
- (E) Whether the proposed use is compatible with other existing or proposed uses in the neighborhood, and adjacent parcels.
- (F) Whether sufficient existing or proposed landscaping, screening and buffering on the site and in the neighborhood to adequately screen surrounding uses.
- (G) Whether the proposed special exception will result in the preservation of any topographic or physical, natural, scenic, archaeological or historic feature of significant importance.
- (H) Whether the proposed special exception will damage existing animal habitat, vegetation, water quality (including groundwater) or air quality.
- (I) Whether the proposed special exception at the specified location will contribute to or promote the welfare or convenience of the public.
- (J) Whether the traffic expected to be generated by the proposed use will be adequately and safely served by roads, pedestrian connections and other transportation services.
- (K) Whether, in the case of existing structures proposed to be converted to uses requiring a special exception, the structures meet all code requirements of Loudoun County.

- (L) Whether the proposed special exception will be served adequately by essential public facilities and services.
 - (M) The effect of the proposed special exception on groundwater supply.
 - (N) Whether the proposed use will affect the structural capacity of the soils.
 - (O) Whether the proposed use will negatively impact orderly and safe road development and transportation.
 - (P) Whether the proposed special exception use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.
 - (Q) Whether the proposed special exception considers the needs of agriculture, industry, and businesses in future growth.
 - (R) Whether adequate on and off-site infrastructure is available.
 - (S) Any anticipated odors which may be generated by the uses on site, and which may negatively impact adjacent uses.
 - (T) Whether the proposed- special exception uses sufficient measure to mitigate the impact of construction traffic on existing neighborhoods and school areas.

6-1311 Conditions and Restrictions.

In approving a special exception or minor special exception, including any requested temporary special events, the Council may impose such conditions, safeguards and restrictions upon the premises benefited by the special exception as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special exceptions upon other property in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs front property lines, location and arrangement of lighting, setting of reasonable time limitations, size, height and location of signs, and other reasonable requirements deemed necessary to safeguard the interest of the general public. The Board may require a guarantee or bond to ensure that conditions imposed will be complied with.. All required conditions shall be set out in the documentation approving the special exception permit.

6-1312 Effect of Issuance of a Permit for a Special Exception.

The issuance of a permit for a special exception or minor special exception shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the Town, including, but not limited to, a building permit, a certificate of occupancy, site plan and subdivision approval and a zoning permit. Temporary special events approved as part of a special exception use application or minor special exception are exempt from the requirements for a temporary use permit stated in Section 5-500(C).

6-1313 Period of Validity,

- (A) Unless a longer period of validity is specifically approved as a part of such application, no special exception or minor special exception permit shall be valid for a period longer than five (5) years from the date on which the special exception was granted, unless within such five (5) year period: (1) a building permit is obtained and the erection or alteration of a structure is started and diligently pursued, and (2) an occupancy permit is obtained and a use commenced. Such period of validity may be extended for good cause shown, provided that an application is submitted to the Council a minimum of thirty (30) calendar days before the expiration date. The special exception or minor special exception approval shall remain valid while such extension is being processed. Failure to request the extension in a timely manner shall cause the special exception or minor special exception to expire, without notice, on the expiration date.

As a condition of approval, a special exception or minor special exception permit may be granted for a specific period of time less than five (5) years with expiration of the approval to occur at the termination of said period. In such case, an extension may be granted prior to expiration by the Council provided that an application is submitted to the Council a minimum of thirty (30) calendar days before the expiration date. No notice or hearing shall be required for such Board action. The special exception or minor special exception approval shall remain valid while such extension is being processed. Failure to request the extension in a Timely manner shall cause the special exception or minor special exception to expire, without notice, on the expiration date. After expiration, no extension may be granted without complying with the requirements for an initial application for a special exception or minor special exception, as applicable.

- (C) If it is determined that the use is not in compliance with all conditions and restrictions previously imposed by the Council, the request for an extension shall be denied or the remedy of any violation shall be required within a specified time. If the request for extension is denied or the applicant fails to correct the violation within the time frame specified, the special exception or minor special exception shall expire and the approval of a new special exception or minor special exception, as applicable shall be required prior to any subsequent reinstatement of the use. If it is determined that the use is no longer allowed as a special exception use in the zoning district in which located, the request shall be denied and the special exception or minor special exception shall expire.

6-1314 Rehearing.

A request for reconsideration of Board action on a special exception or minor special exception application and rehearing before the Board shall be made in writing and filed with the Zoning Administrator within fifteen (15) calendar days after the date of the Board's original decision. The reconsideration request shall cite the reasons for the request. A rehearing may be granted only upon the affirmative vote of a majority of the Council. No amendment to an application shall be permitted in the rehearing process. Any amendment to an application after decision by the Board constitutes a new application.

6-1315 Status of Special Exception Uses.

Once a special exception or minor special exception has been approved, any site plan, subdivision plat, building permit, occupancy permit thereafter submitted for the development or use of the property in accordance with the special exception or minor special exception shall be in substantial conformance with the approved special exception or minor special exception, and no development or use shall be approved by any Town official in the absence of such conformance. Once established, the use, including any approved temporary special events, shall be conducted in substantial conformance with any conditions or restrictions imposed by the Board and all other requirements of this Ordinance.

- (A) No use shall be enlarged, expanded, increased in intensity or relocated and no condition of the special exception or minor special exception shall be modified unless an application is made and approved for a new special exception.

- (B) Notwithstanding the above, any modification to an approved and currently valid special exception or minor special exception to provide an accessibility improvement, as required by the Americans with Disabilities Act or the Commonwealth of Virginia, shall be permitted and shall not require approval of an amendment to the special exception or minor special exception or a new special exception or minor special exception.

6-1316

Modifications to Approved Special Exceptions.

- (A) **Minor Modifications.** Minor modifications to an approved special exception or minor special exception may be permitted by the Zoning Administrator when it is determined by the Zoning Administrator that such are in substantial conformance with the approved special exception or minor special exception and that such are in response to issues of topography, drainage, underground utilities, structural safety, layout, design, vehicular circulation, or requirements of governmental agencies; or are accessory uses; or are accessory structures or minor building additions as permitted below. In no event shall such modifications:
 - (1) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the approved special exception or minor special exception use(s) and minor additions to buildings may be permitted, provided that the sum total of all such structures or additions shall not exceed the following:
 - (a) Five (5) percent of the approved gross floor area of the approved special exception or minor special exception use(s); and
 - (b) The maximum permitted FAR for the zoning district in which located; and
 - (c) The maximum density permitted by the approved special exception or minor special exception.
- (B) **Notice Requirements.** Any request for a minor modification to the approved special exception or minor special exception shall require the provision of written notice in accordance with the following:

- (1) The notice shall be sent to the last known address of the owners (as shown in the Loudoun County real estate assessment records), of all property abutting and across the street from the site, or portion thereof, which is the subject of the request. In addition, if the subject property is included within an incorporated owners' association, then notice shall also be required to such owners' association (at the address on file with the State Corporation Commission. Such notice shall be delivered by hand or sent by certified mail, return receipt requested; and
- (2) The notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and where to call for additional information; and
- (3) Prior to approval, an affidavit that notice has been sent shall be filed with the Zoning Administrator.